



**TO:** The Honorable the Members of the Board of Regents

**FROM:** James N. Baldwin 

**SUBJECT:** Proposed Amendment to Section 114.5 of the Regulations of the Commissioner of Education Relating to the Prohibition Against Suing Parents or Guardians for Unpaid Meal Fees

**DATE:** December 30, 2021

**AUTHORIZATION(S):**  

**SUMMARY**

**Issue for Decision (Consent)**

Should the Board of Regents adopt the proposed amendment of 114.5 of the Regulations of the Commissioner of Education relating to the prohibition against suing parents or guardians for unpaid meal fees?

**Reason(s) for Consideration**

Required by State statute (Chapter 315 of the Laws of 2021).

**Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at its January 2022 Board of Regents meeting. A copy of the proposed rule is included (Attachment A).

**Procedural History**

The proposed amendment was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at its September 2021 meeting. A Notice of Proposed Rule Making was published in the State Register on September 29, 2021 for a 60-day public comment period and a Notice of Emergency Adoption was published in the State Register on October 27, 2021. Because the first emergency action was set to expire on January 3, 2022, a second emergency action was necessary at the December 2021 Regents meeting, effective January 4, 2022, to

ensure that the emergency rule remained continuously in effect until it could be permanently adopted and take effect as a permanent rule.

Following publication in the State Register, the Department received no comments on the proposed amendment. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed. A Notice of Adoption will be published in the State Register on January 26, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents.

### **Background Information**

On July 29, 2021, Chapter 315 of the Laws of 2021 was signed into law which, effective immediately, amended Education Law §908 to prohibit public school districts, charter schools, and non-public schools that participate in the National School Lunch Program or School Breakfast Program from filing a lawsuit against a student's parent or guardian if such student has unpaid school meal fees. This does not apply to schools that participate in the Community Eligibility Provision or Provision Two of the Federal National School Lunch Act, 42 U.S.C. Sec. 1751 *et seq.*, which permits all students to be served free breakfast and lunch. This legislation expands on a 2018 law which prohibited the practice known as "meal shaming" in such schools.

The proposed amendment to section 114.5 of the Regulations of the Commissioner of Education implements Chapter 315 of the Laws of 2021, by amending such section to include the prohibition of lawsuits against students' parents or guardians for unpaid meal fees as required by Education Law §908.

### **Related Regents Items**

December 2021: [Proposed Amendment to Section 114.5 of the Regulations of the Commissioner of Education Relating to the Prohibition Against Suing Parents or Guardians for Unpaid Meal Fees](https://www.regents.nysed.gov/common/regents/files/1221brca5.pdf)

(<https://www.regents.nysed.gov/common/regents/files/1221brca5.pdf>)

September 2021: [P-12 Education Committee Meeting - Proposed Amendment to Section 114.5 of the Regulations of the Commissioner of Education Relating to the Prohibition Against Suing Parents or Guardians for Unpaid Meal Fees](https://www.regents.nysed.gov/common/regents/files/921p12a1.pdf)

(<https://www.regents.nysed.gov/common/regents/files/921p12a1.pdf>)

January 2019: [Proposed Addition of Section 114.5 to the Regulations of the Commissioner Relating to the Prohibition Against Meal Shaming](https://www.regents.nysed.gov/common/regents/files/119brca8.pdf)

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### **Recommendation**

It is recommended that the Board of Regents take the following action:

That section 114.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective January 26, 2022.

### **Timetable for Implementation**

If adopted at the January 2022 meeting, the proposed amendment will become effective as a permanent rule on January 26, 2022.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 305 and 908 (as amended by Chapter 315 of the Laws of 2021).

Subparagraph (iv) of paragraph (5) of subdivision (b) of section 114.5 of the Regulations of the Commissioner of Education, is amended, as follows:

(iv) take any action directed at a pupil to collect unpaid school meal fees. A school or school district may attempt to collect unpaid school meal fees from a student's parent or guardian, but shall not use a debt collector, as defined in Section 803 of the Federal Consumer Credit Protection Act, 15 U.S.C. Sec. 1692a or file a lawsuit against such student's parent or guardian; or